

CONTRACT DIVISION
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32571

AUDIT NO.

67279

A G R E E M E N T

between

MONSANTO CHEMICAL COMPANY, WESTERN DIVISION

and

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY
UNION PACIFIC RAILROAD COMPANY

NORTHERN PACIFIC RAILWAY COMPANY

GREAT NORTHERN RAILWAY COMPANY

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

Dated: March 15, 1947

*This Agreement was
terminated by C.D. No. 32571-1,
Dated September 7, 1956.*

*S. A. Wood
10/1/56*

(Covering turnout connection to spur track East
Marginal Way, King County, Washington.)

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THIS AGREEMENT, made this 15th day of March, 1947, by and between MONSANTO CHEMICAL COMPANY, WESTERN DIVISION, a corporation of the State of Delaware, (hereinafter called the "Shipper") party of the first part, and OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY and its Lessee, UNION PACIFIC RAILROAD COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, and CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, all corporations, (hereinafter collectively called "Railway Companies"), parties of the second part,

W I T N E S S E T H:

WHEREAS, the Shipper desires the Railway Companies to make a turnout connection from their track in East Marginal Way, in King County, Washington, to connect with spur tracks constructed or to be constructed by the Shipper, said spur tracks to be approximately 2615 feet in length, located as shown by green lines on the blue print map marked Exhibit "A" hereto attached, and hereby made a part hereof, and said turnout connection is located as shown by yellow line on said map; and

WHEREAS, the Shipper desires said spur tracks to be operated by the Railway Companies,

NOW, THEREFORE, in consideration of the advantages to accrue to the Shipper in the operation of said spur tracks by the Railway Companies the parties hereto agree as follows:

I.

Shipper agrees to construct and maintain the proposed spur tracks upon the locations indicated by green lines upon said blue

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- 1 -

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print map Exhibit "A" and to construct the same or cause the same to be constructed and maintained so as to permit the safe operation thereon and thereover by trains, motive power, equipment and loads of the Railway Companies. The construction and maintenance thereof shall meet with the requirements and be subject to the approval of a Superintendent of the Railway Companies designated by them and said Superintendent shall determine the point of connection of said spur tracks in the existing track of the parties of the second part.

II.

The Railway Companies shall be privileged to operate upon and over said spur tracks and any extensions thereof in the switching and movement of cars, motive power and equipment for the benefit of the Shipper, or any other person or industry that can be conveniently served by said spur tracks or any extension thereof, and shall have the right to use the said spur tracks for railway purposes when it can be so used without detriment to the Shipper.

III.

The Shipper shall not, without the written consent of the Railway Companies, construct or install any structure or facility over or under the tracks herein provided for and said Shipper agrees that no building, platform or other structure shall be erected or maintained and no material or obstruction of any kind or character shall be placed, piled, stored, stacked or maintained closer than eight (8) feet six (6) inches to the center lines of the tracks, PROVIDED, however, that in the case of platforms not higher than four (4) feet above the top of the rail a minimum clearance of seven (7) feet three (3) inches from the center lines of the tracks will

be permitted; and PROVIDED further that along and adjacent to, and for one car length beyond, all portions of the tracks having a curvature greater than ten (10) degrees the clearance hereinbefore provided shall, with reference to platforms four (4) feet or less in height, be increased horizontally six (6) inches, and with reference to all buildings, platforms, structures and other obstructions greater than four (4) feet in height, shall be increased horizontally one (1) foot; and PROVIDED further that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section III then the Shipper shall strictly comply with such statute or order. All doors, windows or gates shall be of the sliding type or shall open toward the inside of the building or enclosure when such building or enclosure is so located that the said doors, windows or gates if opening outward, would, when opened, impair the clearances in this section prescribed.

IV.

The Railway Companies shall be privileged to discontinue operation of said spur tracks and to remove said turnout connection, in the event of any of the following contingencies, viz:

- (a) The Shipper ceases for a continuous period of one year the doing of business in an active and substantial way at the industry or establishment served.
- (b) The Railway Companies determine that the amount of business done upon said spur tracks is insufficient to justify the continued operation of the same by the Railway Companies.
- (c) The Shipper shall fail to keep and perform any obligation or stipulation stated in or resulting under this contract.

- (d) The Railway Companies shall find it necessary or desirable, or be required by law or ordinance or police regulation, or by changed conditions, to elevate or depress or otherwise alter their tracks at or near said point of turnout connection so as to make it impracticable in the judgment of the management of said Railway Companies to continue said operation; provided, however, that if such change or changes do not render it impracticable in the judgment of said management of said Railway Companies for the convenient operation of their Railroad, the Shipper shall continue to have a similar track connection consistent with the change or changes made by the Railway Companies.
- (e) Whenever any other carrier shall be permitted without the consent of the Railway Companies, to operate on said spur tracks.
- (f) If the Shipper fails to maintain said spur tracks in reasonably safe condition.

No recourse or claim will exist in favor of or be asserted by the Shipper because of the discontinuance of operation and removal of the metal and fastenings as provided in this section of this contract.

V.

The Railway Companies shall not assume or be liable for any expense, or assume or incur any obligations on account of or connected with the acquisition or use of right of way for said spur tracks. If any part or parts of said spur tracks shall be located in any present or future public road, street or highway, and if any competent public authority shall demand or require any change, alteration, improvement or reconstruction of said spur tracks or shall demand or require that the area between or adjoining the rails of said spur tracks be planked, paved or otherwise surfaced, all such work shall be performed by or at the expense of the Shipper, and if any of said work shall be performed by the Railway Companies

or any of them, then and in such event the Shipper covenants and agrees to reimburse such railway company or railway companies for the expense of so doing, promptly upon receiving bill therefor, including any and all expense imposed upon the Railway Companies or any of them, by any municipal permit or franchise relating to said spur track.

VI.

It is understood that the movement of railroad locomotives involves some risk of fire, and the Shipper assumes all responsibility for and agrees to indemnify the Railway Companies and each of them against loss or damage to property of the Shipper or to property upon its premises, regardless of the negligence of the Railway Companies or any of them, arising from fire caused by locomotives operated by the Railway Companies or any of them on the said spur tracks; or in their vicinity, for the purpose of serving the Shipper, except to the premises of the Railway Companies and to rolling stock belonging to the Railway Companies or to others, and to shipments in the course of transportation.

The Shipper also agrees to indemnify and hold harmless the Railway Companies and each of them for loss, damage or injury from any act or omission of the Shipper, its employees or agents, to the person or property of the parties hereto and their employees and agents, and to the person or property of any other person or corporation, while on or about the said spur tracks; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of the parties hereto (or of any two or more of them if there be more than two), it shall be borne equally by the parties at fault.

VII.

Subject to the foregoing terms and conditions, the Railway Companies agree to construct, maintain and operate said turnout connection to a point six and one-half ($6\frac{1}{2}$) feet measured radially from the center line of their said track in East Marginal Way and to connect the same at such point with the said spur tracks of the Shipper.

This contract is made in full contemplation of all applicable restrictive orders and regulations of the United States Government, now or hereafter in effect, and accordingly it is expressly conditioned upon the ability of the Railway Companies to furnish labor and materials, and to secure any necessary authority to perform the work.

VIII.

The terms and provisions of this agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto..

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in quintuplicate the day and year first above written.

MONSANTO CHEMICAL COMPANY, WESTERN
DIVISION

By E. P. Banks
Vice President

Attest:

E. J. Putzell, Jr.
Asst. Secretary

OREGON-WASHINGTON RAILROAD &
NAVIGATION COMPANY
UNION PACIFIC RAILROAD COMPANY

By W. H. Guild
Vice President

Attest:

B. J. Bachman
Asst. Secretary

(Seal)

NORTHERN PACIFIC RAILWAY COMPANY

By W. W. Judson
Vice President

Attest:

A. M. Gottschold
Secretary

GREAT NORTHERN RAILWAY COMPANY

By T. F. Dixon
Vice President

Attest:

F. L. Peitzold
Secretary

CHICAGO, MILWAUKEE, ST. PAUL &
PACIFIC RAILROAD COMPANY

By O. N. Harstad
Vice President

Attest:

F. J. Burtness
Secretary

Approved as to Form:

L. W. Hobbs,
For General Solicitor

Approved as to execution:

(Sgd.) W. J. Schall
Asst. General Attorney

APPROVED

APPROVED
W. J. SCHALL
Asst. General Attorney

Approved:
(Sgd.) W. C. Perkins
Chief Engineer

Approved:
(Sgd.) P. J. Lynch
Vice President - Operation

